

14 CV 2124

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER DEPAOLI, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

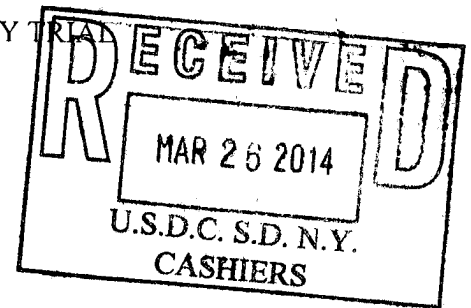
THE LONDON GOLD MARKET FIXING
LTD., BARCLAYS BANK PLC, BARCLAYS
CAPITAL INC., DEUTSCHE BANK AG,
DEUTSCHE BANK SECURITIES, INC.,
HSBC USA, INC., SOCIETE GENERALE
S.A., SG AMERICAS SECURITIES, LLC,
THE BANK OF NOVA SCOTIA, and
SCOTIA CAPITAL (USA) INC.,

Defendants.

Civil Action No. _____

CLASS ACTION

DEMAND FOR JURY TRIAL



CLASS ACTION COMPLAINT

NOW COMES Plaintiff, Christopher DePaoli, for his Complaint brought under Section 1 of the Sherman Antitrust Act, Sections 4 and 16 of the Clayton Antitrust Act, certain states' antitrust and unfair competition laws, the common law of unjust enrichment under the laws of all fifty of the United States and its territories, and Rule 23 of the Federal Rules of Civil Procedure, for treble damages, punitive damages, full consideration damages, disgorgement, declaratory and injunctive relief, costs of suit, and other relief, on behalf of himself, and, in a representative capacity, on behalf of those similarly situated, against Defendants for their continuing combination and conspiracy to fix and manipulate prices and otherwise unreasonably restrain trade in physical gold, gold derivatives, and other financial instruments directly linked to the price of physical gold, from January 1, 2004, through the present, and, based upon personal knowledge, information, belief, and investigation of counsel, alleges:

I. NATURE OF THE ACTION

1. The price of gold is set by a combination of five of the largest gold-dealing banks in the world – the members of Defendant The London Gold Market Fixing Ltd.
2. The five multinational banks are Defendants Barclays, Deutsche Bank, HSBC, Société Générale, and Scotiabank.
3. The name of the process is the “fix.” The price fixings are used to determine prices worldwide,”¹ in the “\$20-trillion-a-year gold market.”²

¹ Simon Goodley, *Could gold be the next Libor scandal? US regulator considering an inquiry into London's gold and silver markets to check if prices are open to manipulation*, THE GUARDIAN, Mar. 13, 2013, available at <http://www.theguardian.com/business/2013/mar/13/london-financial-sector-gold-market>.

² Francesca Freeman, *Deutsche Bank Hires Consultancy to Review Gold Fix Role: Move Comes as Regulators in Germany and U.K. Review Process of Benchmark Prices*, THE WALL STREET JOURNAL, Mar. 4, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702304360704579419051927642642>.

4. The system has been in place since 1919. Defendants literally fix the price of gold twice per day, every business day. Defendants fix the price through short conference calls, once in the morning and once in the afternoon. Through this process, these five multinational banks, by their concerted action, thus dictate the price paid for physical gold and thus the price for financial instruments directly linked to the price of physical gold, including gold derivatives.

5. THE WALL STREET JOURNAL reports, for example, that the fix “determines how much mining companies earn selling raw metals to refineries. It also helps determine the value of derivatives whose prices are tied to the metals.”³ “The fix is a global benchmark for the spot price of gold that is used by, for example, jewelers and central bankers to price deals and help determine the value of securities tied to gold, such as exchange-traded funds.”⁴

6. U.S. and European authorities are investigating the fix, which recent economic studies suggest may be manipulated by Defendants. “U.S. regulators are scrutinizing whether prices are being manipulated,”⁵ and “the U.K. Financial Conduct Authority (FCA) has launched a probe over the way gold prices are set every day in London.”⁶ The German Federal Financial Supervisory Authority, “BaFin,” is reported to have “demanded documents from Deutsche Bank as

³ Katy Burne, *et al.*, *U.S. Probes Gold Pricing*, THE WALL STREET JOURNAL, Mar. 13, 2013, available at <http://online.wsj.com/article/SB10001424127887324077704578358381575462340.html>.

⁴ Francesca Freeman, *Deutsche Bank Hires Consultancy to Review Gold Fix Role: Move Comes as Regulators in Germany and U.K. Review Process of Benchmark Prices*, THE WALL STREET JOURNAL, Mar. 4, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702304360704579419051927642642>.

⁵ Katy Burne, *et al.*, *U.S. Probes Gold Pricing*, THE WALL STREET JOURNAL, Mar. 13, 2013, available at <http://online.wsj.com/article/SB10001424127887324077704578358381575462340.html>.

⁶ Cecilia Jamasmie, *London gold fixing under increasing scrutiny*, MINING.COM, Nov. 26, 2013, <http://www.mining.com/london-gold-fixing-under-increasing-scrutiny-49384>.

part of a probe into suspected manipulation by banks of benchmark gold.”⁷

7. On January 16, 2014, Dr. Elke König, the President of BaFin, gave a speech in which she announced: “Manipulation of benchmarks should become a crime.”⁸ Within 18 hours, Deutsche Bank announced it would be exiting the gold price fixing panel on which it has sat for twenty years.⁹

8. Coinciding with the government investigations are recent economic studies of the gold price fixing process that raise the possibility of collusion and manipulation.¹⁰ First, in September 2013, an academic study observed that just after the gold fixing process begins (rather than after it ends), gold derivatives trading skyrockets, which the researchers attribute to directional information leaking during the fix itself.¹¹ In February, BLOOMBERG reported on another (forthcoming) economic study suggesting the fix “may have been manipulated for a decade by the

⁷ Jan Harvey and Veronica Brown, *How London's gold and silver price benchmarks are 'fixed,'* REUTERS, Jan 17, 2014, available at <http://www.reuters.com/article/2014/01/17/gold-fix-idUSL5N0KR2U620140117>; *Deutsche Bank To Withdraw From Gold Fix Amid Probe*, FOX BUSINESS NEWS, Jan. 17, 2014, available at <http://www.foxbusiness.com/industries/2014/01/17/deutsche-bank-to-withdraw-from-gold-fix-amid-probe>.

⁸ Adrian Ash, *Cat Meets Pigeons in London Fix Regulation: Gold Fix Loses Deutsche Bank within 18 hours of regulator Bafin speech. Coincidence...?*, BULLIONVAULT.COM, Jan. 17, 2014, <http://goldnews.bullionvault.com/fix-deutsche-011720146>.

⁹ *Deutsche Bank To Withdraw From Gold Fix Amid Probe*, FOX BUSINESS NEWS, Jan. 17, 2014, available at <http://www.foxbusiness.com/industries/2014/01/17/deutsche-bank-to-withdraw-from-gold-fix-amid-probe> (“Deutsche Bank will withdraw from gold . . . benchmark setting, or fixing, amid an investigation by German regulators into suspected manipulation of precious metals prices by banks.”).

¹⁰ Andrew Caminschi & Richard Heaney, *Fixing a Leaky Fixing: Short-Term Market Reactions to the London PM Gold Price Fixing*, THE JOURNAL OF FUTURES MARKETS (Sept. 2, 2013).

¹¹ Liam Vaughan, *et al.*, *London Gold Fix Calls Draw Scrutiny Amid Heavy Trading*, BLOOMBERG, Nov. 26, 2013, available at <http://www.bloomberg.com/news/2013-11-26/gold-fix-drawing-scrutiny-amid-knowledge-tied-to-eruption.html>.

banks setting it,”¹² observing “the structure of the benchmark is certainly conducive to collusion and manipulation, and the empirical data are consistent with price artificiality,” and concluding it “likely that co-operation between participants may be occurring.”¹³ Also in February 2014, THE FINANCIAL TIMES reported on a second forthcoming study by other researchers suggestive of collusion.¹⁴ “Fideres’ research found the gold price frequently climbs (or falls) once a twice-daily conference call between the five banks begins, peaks (or troughs) almost exactly as the call ends and then experiences a sharp reversal, a pattern it alleged may be evidence of ‘collusive behavior.’”¹⁵

9. A year ago almost to the day, THE WALL STREET JOURNAL reported on what it then called “a new price-fixing investigation,” asking “**Did five banks control the price of gold in the world’s largest market?**”¹⁶

10. On information and belief based on evolving economic evidence, intensifying government investigations, and Deutsche Bank’s abrupt exit from the panel amid increasing public and governmental scrutiny, Plaintiff alleges that the answer is “**Yes.**”

¹² Liam Vaughan, *Gold Fix Study Shows Signs of Decade of Bank Manipulation*, BLOOMBERG, Feb 28, 2014, available at <http://www.bloomberg.com/news/print/2014-02-28/gold-fix-study-shows-signs-of-decade-of-bank-manipulation.html>.

¹³ *Id.*

¹⁴ *Gold price rigging fears put investors on alert*, THE FINANCIAL TIMES, February 23, 2013, available at <http://www.zerohedge.com/news/2014-02-25/here-fts-gold-price-manipulation-article-was-removed>.

¹⁵ *Id.*

¹⁶ Katy Burne, *et al.*, *U.S. Probes Gold Pricing*, THE WALL STREET JOURNAL, Mar. 13, 2013, available at <http://online.wsj.com/article/SB10001424127887324077704578358381575462340.html>.

II. PARTIES

A. Plaintiff

11. Plaintiff Christopher Depaoli is a natural person who resides in the State of Florida. He held and transacted in physical gold and financial instruments directly linked to the price of physical gold during the Class Period.

B. Defendants

1. The London Gold Market Fixing Ltd.

12. Defendant The London Gold Market Fixing Ltd. is a British private company with its principal place of business located at One Silk Street, London EC2Y 8HQ, United Kingdom.

13. The London Gold Market Fixing, Ltd. is “the umbrella entity that administers and sets the gold rate,”¹⁷ for its five member banks – Defendants Barclays, Deutsche Bank, HSBC, Société Générale and Scotiabank. It “has no permanent employees.”¹⁸

14. The London Gold Market Fixing Ltd. is referred to herein as Gold Price Fixing Limited.

2. Barclays Defendants

15. Defendant Barclays Bank plc is a British public limited company with its principle place of business located at 1 Churchill Place, London E14 5HP, United Kingdom.

16. Defendant Barclays Capital Inc. is a Connecticut corporation with its principle place of business located at 745 Seventh Avenue, New York, NY 10019 and wholly owned subsidiary of

¹⁷ Francesca Freeman, *Gold-Price Banks Meet Amid Regulatory Pressure: ‘London Fixings’ Are Used to Set Spot Prices World-Wide*, THE WALL STREET JOURNAL, Jan. 21, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702304757004579334610861787486>.

¹⁸ Liam Vaughan, *et al.*, *London Gold Fix Calls Draw Scrutiny Amid Heavy Trading*, BLOOMBERG, Nov. 26, 2013, available at <http://www.bloomberg.com/news/2013-11-26/gold-fix-drawing-scrutiny-amid-knowledge-tied-to-eruption.html>.

Barclays Bank plc.

17. Defendants Barclays Bank plc and Barclays Capital Inc. are collectively referred to herein as “Barclays.”

18. Barclays has been a member of Gold Price Fixing Limited during the Class Period.

19. Barclays was a member of the unlawful combination and conspiracy alleged herein.

20. Barclays, itself and/or by and through wholly owned and controlled subsidiaries, transacts in physical gold and other financial instruments directly linked to the price of gold and did so during the entire Class Period.

3. Deutsche Bank Defendants

21. Deutsche Bank AG is a German *aktiengesellschaft* with its principal place of business located at Taunusanlage 12, 60325 Frankfurt, Germany.

22. Defendant Deutsche Bank Securities Inc. is a Delaware corporation and wholly owned subsidiary of Deutsche Bank U.S. Financial Markets Holding Corporation and ultimately Deutsche Bank AG, with its principle place of business located at 60 Wall Street, New York, NY 10005.

23. Defendants Deutsche Bank AG and Deutsche Bank Securities Inc. are collectively referred to herein as “Deutsche Bank.”

24. Deutsche Bank is a member of Gold Price Fixing Limited and has been during the entire Class Period. Deutsche Bank recently announced it would be withdrawing as a member of Gold Price Fixing Limited.

25. Deutsche Bank was and is a member of the unlawful combination and conspiracy alleged herein.

26. Deutsche Bank itself and/or by and through wholly owned and controlled subsidiaries, transacts in physical gold and other financial instruments directly linked to the price of

gold and did so during the Class Period.

4. HSBC Defendant

27. Defendant HSBC USA Inc. (“HSBC”) is a Maryland corporation with its principle place of business located at 452 Fifth Avenue, New York, NY 10018.

28. HSBC is a member of Gold Price Fixing Limited and has been during the entire Class Period.

29. HSBC was and is a member of the unlawful combination and conspiracy alleged herein.

30. HSBC, itself and/or by and through wholly owned and controlled subsidiaries, transacts in physical gold and other financial instruments directly linked to the price of gold and did so during the entire Class Period.

5. Société Générale Defendants

31. Defendant Société Générale S.A. is a French *société anonyme* with its principle place of business located at 29, Boulevard Haussmann, 75009 Paris, France.

32. Defendant SG Americas Securities, LLC (“SocGen America”) is a Delaware limited liability company, with its principle place of business located at 1221 Avenue of the Americas, New York, NY 10020, with additional offices located in Boston, Chicago and Houston.

33. SocGen America is a domestic subsidiary of Société Générale S.A. (collectively with SocGen America, “SocGen”).

34. SocGen is a member of Gold Price Fixing Limited and has been during the entire Class Period.

35. SocGen was and is a member of the unlawful combination and conspiracy alleged herein.

36. SocGen, itself and/or by and through wholly owned and controlled subsidiaries,

transacts in physical gold and other financial instruments directly linked to the price of gold and did so during the entire Class Period.

6. Scotiabank Defendants

37. Defendant The Bank of Nova Scotia is a Canadian public company with its principle place of business located at 44 King Street West, Toronto, Ontario Canada M5H 1H1. ScotiaMocatta, a division of The Bank of Nova Scotia, and part of Scotiabank Global Banking and Markets segment, is a global leader in precious and base metals trading, finance and physical metal distribution providing services to its worldwide client base.

38. Defendant Scotia Capital (USA) Inc. (“Scotiabank America”) is a New York corporation with its principle place of business located at 1 Liberty Plaza, 165 Broadway, New York, NY 10006.

39. Scotiabank America is domestic subsidiary of The Bank of Nova Scotia (collectively with Scotiabank America, “Scotiabank”).

40. Scotiabank is a member of Gold Price Fixing Limited and has been during the entire Class Period.

41. Scotiabank was and is a member of the unlawful combination and conspiracy alleged herein.

42. Scotiabank, itself and/or by and through wholly owned and controlled subsidiaries, transacts in physical gold and other financial instruments directly linked to the price of gold and did so during the entire Class Period.

III. AGENTS AND CO-CONSPIRATORS

43. Other entities and individuals unknown to Plaintiff at this time participated as co-conspirators and performed acts in furtherance of the conspiracy. Whenever reference is made to any act, deed, or transaction of any corporation or partnership, the allegation means that the

corporation or partnership engaged in the act, deed or transaction by or through its officers, directors, agents, employees, representatives, parent, predecessors or successors-in-interest while they were actually engaged in the management, direction, control or transaction of business or affairs of the corporation or partnership.

IV. JURISDICTION, VENUE, AND COMMERCE

44. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337.

45. The Court may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's claims under the laws of the several states.

46. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a) & 22 and 28 U.S.C. § 1391(b), (c) and (d), because during the Class Period, Defendants resided, transacted business, were found, or had agents in this District, and a substantial portion of the alleged activity affected interstate trade and commerce in this District.

47. Defendants' conduct was within the flow of, was intended to, and did, in fact, have a substantial effect on the interstate commerce of the United States, including in this District.

48. During the Class Period, Defendants used the instrumentalities of interstate commerce, including interstate railroads, highways, waterways, wires, wireless spectrum, and the U.S. mail, to effectuate their illegal scheme.

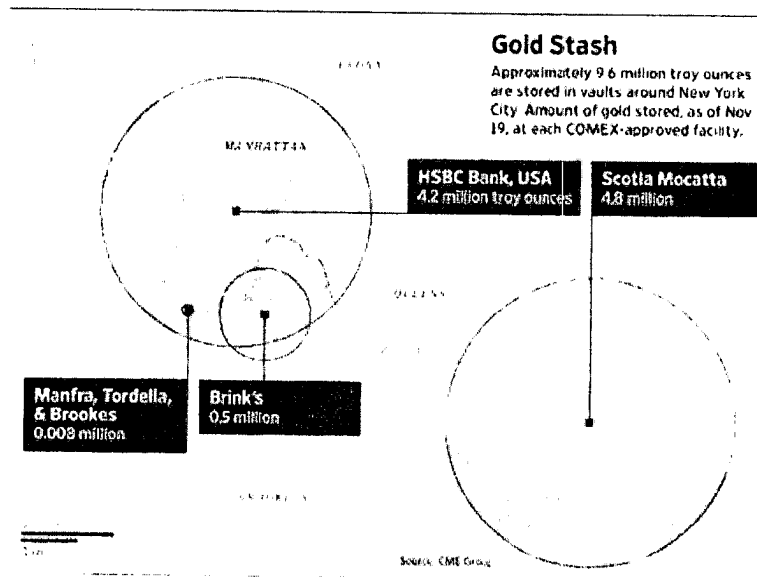
49. Defendants' manipulation, conspiracy and conduct alleged herein was in U.S. import commerce and/or had direct, substantial and reasonably foreseeable effects on U.S. domestic commerce, within the meaning of the Foreign Trade Antitrust Improvements Act.

50. Defendants' conduct had a substantial effect on the intrastate commerce of each of the fifty United States and its territories.

51. This Court has personal jurisdiction over each Defendant, because each Defendant

transacted business, maintained substantial contacts, is located and/or they or their coconspirators committed overt acts in furtherance of their illegal conspiracy, in the United States, including in this District. The scheme was directed at, and had the intended effect of, causing injury to persons residing in, located in, or doing business in this District.

52. THE WALL STREET JOURNAL reports that Defendants HSBC and Scotiabank themselves have approximately 9 million troy ounces of physical gold bullion stored in vaults and around Manhattan.¹⁹



V. CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action on behalf of himself and, under Rules 23(a) and (b) of the Federal Rules of Civil Procedure, on behalf of a Class defined as follows:

All persons or entities that held or transacted in physical gold, gold derivatives and/or other financial instruments directly linked to the price of physical gold, in the United States and its territories at any time from January 1, 2004 to present (the "Class").

¹⁹ Carolyn Cui, *A Mad Rush as Gold Bugs Get the Boot*, THE WALL STREET JOURNAL, Nov. 24, 2009, available at <http://online.wsj.com/news/articles/SB125902295608261455>.

54. Excluded from the Class are Defendants, and their officers, directors, management, employees, subsidiaries, or affiliates and all federal governmental entities. Also excluded are the Judge presiding over this action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person.

55. Members of the Class are so numerous and geographically dispersed that joinder is impracticable. Further, the Class is readily identifiable from information and records in the possession of Defendants.

56. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and members of the Class were damaged by the same wrongful conduct of Defendants.

57. Plaintiff will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of the Class.

58. Plaintiff is represented by counsel with experience in the prosecution of class action antitrust litigation.

59. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual Class members, thereby making damages with respect to the Class as a whole appropriate. Questions of law and fact common to the Class include, but are not limited to:

- a. Whether Defendants fixed and manipulated the price of physical gold, gold derivatives, and other financial instruments directly linked to the price of physical gold;
- b. The length of the conspiracy;
- c. Damages resulting from the conspiracy;
- d. Whether defendants were unjustly enriched; and
- e. Whether Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief

with respect to the Class as a whole.

60. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort or expense that numerous individual actions would require. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

61. Plaintiff knows of no special difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

VI. THE GOLD FIX

A. Background

62. Gold prices are set twice a day by the concerted action of Defendant Gold Price Fixing Limited and its price fixing panel of five multinational banks, Defendants Barclays, Deutsche Bank, HSBC, SocGen and Scotiabank. “The price fixings are then used to determine prices worldwide.”²⁰

63. Procedurally, the fix is “a conference call, typically ten minutes long, when the banks exchange information and decide on the price.”²¹ Defendants set the price of gold twice per

²⁰ Simon Goodley, *Could gold be the next Libor scandal? US regulator considering an inquiry into London's gold and silver markets to check if prices are open to manipulation*, THE GUARDIAN, Mar. 13, 2013, available at <http://www.theguardian.com/business/2013/mar/13/london-financial-sector-gold-market>.

²¹ *In a Fix, Mr. Bond: New concerns surround the way the world gold price is set*, THE ECONOMIST, Mar. 8, 2014, available at <http://www.economist.com/news/finance-and-economics/21598676-new-concerns-surround-way-world-gold-price-set-fix-mr-bond>.

day through such conference calls, once in the morning and once in the afternoon. The chairman proposes an opening price, and firms declare how many bars of gold they would buy or sell at that price, supposedly based on client orders and their own portfolios. The price is increased or decreased until supply ostensibly matches demand, at which point the price is declared fixed.

64. “Normally it’s a 10 or 15-minute process, but it can take up to half an hour. The longest fixing actually took place back on 19th October 1987 – Black Monday,” when it “took two hours and 15 minutes to reach agreement,” and “when the U.S. stock market dropped 23% of its value.”²²

65. “The fixing of the gold price in London dates back to September 1919, when the process involved NM Rothschild & Sons, Mocatta & Goldsmid, Samuel Montagu & Co, Pixley & Abell and Sharps & Wilkins.”²³ “Dealers in the early years met in a wood-paneled room in Rothschild’s office in the City of London and raised little Union Jacks to indicate interest. Now the fix is calculated twice a day on telephone conferences at 10:30 a.m. and 3 p.m. London time. The calls usually last 10 minutes, though they can run more than an hour.”²⁴

66. The panel experienced not insubstantial structural changes in and around 2004 that coincide both with the unusual fixing patterns observed since that time and the formation of the panel as now assembled. Barclays first joined Gold Price Fixing Limited in 2004, upon founding

²² Joe Rios, *The London Gold Fix – Be Amazed: A Recurring Phenomenon Twice A Day In The Gold Market*, THE TRADING ROOM, <http://www.thetradingroom.com/london-gold-fix-amazed>.

²³ Simon Goodley, *Could gold be the next Libor scandal? US regulator considering an inquiry into London’s gold and silver markets to check if prices are open to manipulation*, THE GUARDIAN, Mar. 13, 2013, available at <http://www.theguardian.com/business/2013/mar/13/london-financial-sector-gold-market>.

²⁴ Liam Vaughan, *Gold Fix Study Shows Signs of Decade of Bank Manipulation*, BLOOMBERG, Feb 28, 2014, available at <http://www.bloomberg.com/news/print/2014-02-28/gold-fix-study-shows-signs-of-decade-of-bank-manipulation.html>.

member Rothchild's departure. At the time, it was reported: "Rothschild's departure will leave a big gap, not least because it hosts the twice-daily gold price fixing."²⁵ At that point, the meeting went from in-person to the telephone system used today. Also in 2004, Scotiabank became the first non-British firm to take a turn as Chairman. SocGen, the current chair of the gold-fixing panel, has been a member of the fix since 2002. (Deutsche Bank has been on the panel since 1984. HSBC has been on the panel since 1999 and Scotiabank since 1997.)

B. Prices of Gold Derivatives and Other Financial Instruments Are Directly Related to the Gold Fix

67. The fix sets the price of gold derivatives and other financial instruments in addition to physical gold itself. The prices of certain financial instruments, such as gold derivatives, including the price of COMEX gold futures and options, are directly and proximately caused by, and inextricably intertwined with, prices for physical gold fixed by Defendants' combination.

68. In the words of THE ECONOMIST, "Commodity prices are not just for buyers and sellers of the physical stuff. They are also the basis of derivative markets—futures contracts, options, and combinations of these and other financial instruments—which can be far larger. A twitch in the 'benchmark' price can mean big shifts in the value of derivatives, and profits for the prescient."²⁶ Futures prices and physical spot prices are linked and correlated.

69. THE WALL STREET JOURNAL reports, for example, that the fix "determines how much mining companies earn selling raw metals to refineries. It also helps determine the value of

²⁵ *Rothschild to leave gold market*, BBC NEWS, Apr. 15, 2004, available at <http://news.bbc.co.uk/2/hi/business/3628971.stm>.

²⁶ *In a Fix, Mr. Bond: New concerns surround the way the world gold price is set*, THE ECONOMIST, Mar. 8, 2014, available at <http://www.economist.com/news/finance-and-economics/21598676-new-concerns-surround-way-world-gold-price-set-fix-mr-bond>.

derivatives whose prices are tied to the metals.”²⁷ “The fix is a global benchmark for the spot price of gold that is used by, for example, jewelers and central bankers to price deals and help determine the value of securities tied to gold, such as exchange-traded funds.”²⁸

VII. TRANSACTING IN GOLD

A. Physical Trading

70. Physical gold is traded over the counter (“OTC”) by reference to the price fixed and manipulated by Defendants. The fixed price also is ostensibly a mechanism of price discovery designed to allow traders to transact at a competitive market price. The fixed price is published once in the morning and once in the afternoon. It is published widely in newspapers and the internet.

71. Defendants, the fixers, transact both on their own behalf and for and with customers. Customers that transact in gold at the fix with Defendants pay them a premium. Each of the bank Defendants operates both as a price fixer and a market maker, trading with its customers. Defendants thus not only have the means and opportunity to conspire to fix prices through Gold Price Fixing Limited, they also have strong motive to do so.

72. There are a variety of ways that physical gold is traded. Examples include trading of gold bars and coins, with actual physical delivery, as well as through bullion accounts. Physical gold may be held in either allocated or unallocated accounts. The key difference is where credit risk

²⁷ Katy Burne, *et al.*, *U.S. Probes Gold Pricing*, THE WALL STREET JOURNAL, Mar. 13, 2013, available at <http://online.wsj.com/article/SB10001424127887324077704578358381575462340.html>.

²⁸ Francesca Freeman, *Deutsche Bank Hires Consultancy to Review Gold Fix Role: Move Comes as Regulators in Germany and U.K. Review Process of Benchmark Prices*, THE WALL STREET JOURNAL, Mar. 4, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702304360704579419051927642642>.

is allocated. An allocated account gives entitlement to specific, designated stock, which is segregated, and for which the account holder is provided a list of bar numbers, weights and assays of each bar. A bullion bank acts as a custodian for the account holder, which has full title to the gold. The account holder thus has no credit risk on the custodian. An unallocated account is the most popular way to hold precious metals balances. It gives general entitlement to gold but specific stock is not set aside or assigned to the account holder. Balances on the account are backed by the general stock of the bullion clearer with whom the account is held. The account holder has credit risk on the custodian as an unsecured creditor.

B. Gold Derivatives

73. Gold derivatives are exchange-traded, as opposed to traded OTC, as is physical gold. Futures contracts and gold options contracts are traded on COMEX, which, being an exchange, provides standardized gold futures contracts with delivery dates commencing with the next calendar month and potentially extending into the future depending upon the month of contract execution. Trading is conducted for delivery during certain designated months.

74. A gold futures contract is an agreement to buy or sell a fixed amount of gold, typically 100 troy ounces, at a future date. Trades of gold futures contracts on the COMEX have a long side and a short side. If a market participant holds its position to the end of the settlement period for a gold futures contract, the market participant is obligated to “go to delivery,” meaning the holder is obligated to purchase or sell actual physical gold. Longs must take delivery and shorts must make delivery of 100 troy ounces per contract. Only a small percentage of all futures contracts traded each year on the COMEX and other exchanges result in actual delivery of the underlying commodities, however. Traders generally offset their futures positions before their contracts mature.

75. There are two types of options, calls and puts. A call gives the holder of the gold

option the right, but not the obligation, to buy the underlying gold futures contract at a certain price, the strike price, up until some point in the future—options expiry. Conversely, the put gives the holder the right, but not the obligation, to sell the underlying gold futures contract at the strike price until options expiry. Puts are usually bought when the expectation is for falling prices; a call is usually purchased when the expectation is for rising prices. The price at which an option is bought or sold is the premium. There are various ways to use options to go short, *i.e.*, profit from gold price decreases or go long, *i.e.*, profit from gold price increases. As to going short, one can sell a futures contract, buy put options, or sell call options.

C. Other Financial Instruments Linked Directly to Physical Gold

76. Gold exchange-traded funds (“ETFs”) are a popular way to have gold exposure without storing physical metal. The most heavily traded ETF is SPDR Gold Shares (GLD). ETFs “track the spot price of gold because they are backed solely by physical gold bullion held in a vault in London, the world hub of gold bullion trading.”²⁹ For each share of these ETFs you buy, you generally own the equivalent of 1/10 an ounce of gold.³⁰

77. Exchange-traded notes (“ETNs”) are debt instruments that track an index. With respect to gold, some of the more popular ETNs are UBS Bloomberg CMCI Gold ETN (UBG), DB Gold Double Short ETN (DZZ), DB Gold Short ETN (DGZ) and DB Gold Double Long ETN (DGP). ETNs are like playing the futures market without buying contracts on the COMEX. ETNs are flexible, and an investor can trade them long or short, but there is no principal protection.³¹

²⁹ GLD, STATESTREETSPDRS.COM, http://statestreetspdrs.com/gld_precise/?utm_campaign=gld_after&utm_source=google&gclid=CMTJ3Y_Rg70CFcFI0godFyUAsA.

³⁰ Alix Steel, *How to Invest in Gold*, THE STREET, Feb. 4, 2011, available at <http://www.thestreet.com/story/10389829/1/how-to-invest-in-gold.html>.

³¹ *Id.*

78. Gold certificates allow investors to hold gold without taking delivery. The bullion is held by issuing banks. The investor, however, must still pay fees related to insurance and storage.

VIII. RECENT INDICATIONS OF MANIPULATION AND COLLUSION

A. Government Investigations into the Fix

79. U.S. and European authorities are investigating the fix. “U.S. regulators are scrutinizing whether prices are being manipulated.”³² In particular, the U.S. Commodity Futures Trading Commission (CFTC) said last March that it had “started internal discussions on whether the daily setting of gold and silver benchmarks is open to manipulation.”³³ Early last year, CFTC Commissioner Bart Chilton issued a statement to the International Roundtable on Financial Benchmarks, providing in part:

I’m pleased we are discussing the critically important topic of benchmarks. We’ve witnessed blatant and brazen monkeying with the marks . . . the idea that pervasive manipulation, or attempted manipulation, is so widespread should make us all query the veracity of the other key marks. What about energy, swaps, the **gold** and silver **fixes in London** and the whole litany of “bors?” Why would they be any different in the minds of those that may have sought to push or pull rates? For me, this means every single mark needs to be reviewed, and potentially investigated.³⁴

Commissioner Chilton followed up on these remarks: “Given what we have seen in Libor, we’d be

³² Katy Burne, *et al.*, *U.S. Probes Gold Pricing*, THE WALL STREET JOURNAL, Mar. 13, 2013, available at <http://online.wsj.com/article/SB10001424127887324077704578358381575462340.html>.

³³ Jan Harvey and Veronica Brown, *How London's gold and silver price benchmarks are 'fixed,'* REUTERS, Jan 17, 2014, available at <http://www.reuters.com/article/2014/01/17/gold-fix-idUSL5N0KR2U620140117>.

³⁴ Statement of Commissioner Bart Chilton Before the International Roundtable on Financial Benchmarks, Washington, D.C., Feb. 26, 2013, available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/chiltonstatement022613> (emphasis added).

foolish to assume that other benchmarks aren't venues that deserve review."³⁵

80. In addition, "European regulators including Germany's Bafin are looking more closely at how banks set benchmarks such as the twice-daily spot gold price fix after the Libor rigging scandal exposed widespread interest rate manipulation."³⁶ The "U.K. Financial Conduct Authority (FCA) has launched a probe,"³⁷ and the German Federal Financial Supervisory Authority, "BaFin," is reported to have "demanded documents from Deutsche Bank as part of a probe into suspected manipulation by banks of benchmark gold."³⁸

81. Dr. Elke König, the President of BaFin, gave a speech on January 16, 2014, in which she remarked: "Markets depend on the trust of the wider public that they are performing and that they work honestly."³⁹ President König's also announced: "Manipulation of benchmarks should become a crime."⁴⁰

³⁵ Nicholas Larkin and Debarati Roy, *CFTC's Chilton Says 'Foolish' Not to Review Benchmark Pricing*, BLOOMBERG, Mar. 14, 2013, available at <http://www.bloomberg.com/news/2013-03-14/cftc-s-chilton-says-foolish-not-to-review-benchmark-pricing.html>.

³⁶ Jan Harvey and Veronica Brown, *How London's gold and silver price benchmarks are 'fixed,'* REUTERS, Jan 17, 2014, available at <http://www.reuters.com/article/2014/01/17/gold-fix-idUSL5N0KR2U620140117>.

³⁷ Cecilia Jamasmie, *London gold fixing under increasing scrutiny*, MINING.COM, Nov. 26, 2013, <http://www.mining.com/london-gold-fixing-under-increasing-scrutiny-49384>.

³⁸ Jan Harvey and Veronica Brown, *How London's gold and silver price benchmarks are 'fixed,'* REUTERS, Jan 17, 2014, available at <http://www.reuters.com/article/2014/01/17/gold-fix-idUSL5N0KR2U620140117>; *Deutsche Bank To Withdraw From Gold Fix Amid Probe*, FOX BUSINESS NEWS, Jan. 17, 2014, available at <http://www.foxbusiness.com/industries/2014/01/17/deutsche-bank-to-withdraw-from-gold-fix-amid-probe>.

³⁹ Jan Harvey and Veronica Brown, *How London's gold and silver price benchmarks are 'fixed,'* REUTERS, Jan 17, 2014, available at <http://www.reuters.com/article/2014/01/17/gold-fix-idUSL5N0KR2U620140117>.

⁴⁰ Adrian Ash, *Cat Meets Pigeons in London Fix Regulation: Gold Fix Loses Deutsche Bank*

B. Defendants' Conduct in the Wake of Public Scrutiny

82. The day after President König's call for criminalization of benchmark manipulation, Deutsche Bank announced it would be exiting the gold price fixing panel on which it has sat for twenty years.⁴¹ It turns out that "Boston-based Charles River Associates was initially hired several months ago to undertake an assessment of Deutsche Bank's participation in the gold fix, according to a person familiar with the matter."⁴² Although not a law firm, according to its website, Charles River "helps clients in a broad range of industries respond to pressing regulatory and legal challenges."⁴³ Among Charles River's areas of "expertise" is "Antitrust & Competition Economics."⁴⁴

83. In addition to Deutsche Bank's own review and decision to step down from the panel, Defendants are said to have "formed a steering committee to review the so-called 'London fixings' amid intense regulatory scrutiny over possible manipulation of precious-metals prices."⁴⁵

within 18 hours of regulator Bafin speech. Coincidence...?, BULLIONVAULT.COM, Jan. 17, 2014, <http://goldnews.bullionvault.com/fix-deutsche-011720146>.

⁴¹ *Deutsche Bank To Withdraw From Gold Fix Amid Probe*, FOX BUSINESS NEWS, Jan. 17, 2014, available at <http://www.foxbusiness.com/industries/2014/01/17/deutsche-bank-to-withdraw-from-gold-fix-amid-probe>. ("Deutsche Bank will withdraw from gold . . . benchmark setting, or fixing, amid an investigation by German regulators into suspected manipulation of precious metals prices by banks.").

⁴² Francesca Freeman, *Deutsche Bank Hires Consultancy to Review Gold Fix Role: Move Comes as Regulators in Germany and U.K. Review Process of Benchmark Prices*, THE WALL STREET JOURNAL, Mar. 4, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702304360704579419051927642642>.

⁴³ Charles River Associates, <http://www.crai.com/ConsultingExpertise/content.aspx?tlID=572> (last visited Mar. 21, 2014).

⁴⁴ Charles River Associates, <http://www.crai.com/ConsultingExpertise/content.aspx?tlID=960> (last visited Mar. 21, 2014).

⁴⁵ Francesca Freeman, *Gold-Price Banks Meet Amid Regulatory Pressure: 'London Fixings'*

C. Recent Economic Reports Suggest Manipulation

84. Recent studies indicate that gold prices have been manipulated at least since 2004. It has been observed as “troubling,” in an economic sense, that a “small group of people” with “complete lack of oversight” set prices in which they have multiple other interests.⁴⁶

85. First, in September 2013, an academic study observed that just after the gold fixing process begins (rather than after it ends), gold derivatives trading skyrockets, which the researchers attribute to directional information leaking during the fix itself.⁴⁷ “Four traders interviewed by Bloomberg News said that’s because dealers and their clients are using information from the talks to bet on the outcome.”⁴⁸

86. Then, in February 2014, BLOOMBERG reported on another (forthcoming) economic study suggesting that the fix “may have been manipulated for a decade by the banks setting it,”⁴⁹ observing that “the structure of the benchmark is certainly conducive to collusion and manipulation, and the empirical data are consistent with price artificiality,” and concluding it

Are Used to Set Spot Prices World-Wide, THE WALL STREET JOURNAL, Jan. 21, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702304757004579334610861787486>.

⁴⁶ *In a Fix, Mr. Bond: New concerns surround the way the world gold price is set*, THE ECONOMIST, Mar. 8, 2014, available at <http://www.economist.com/news/finance-and-economics/21598676-new-concerns-surround-way-world-gold-price-set-fix-mr-bond>.

⁴⁷ Andrew Caminschi & Richard Heaney, *Fixing a Leaky Fixing: Short-Term Market Reactions to the London PM Gold Price Fixing*, THE JOURNAL OF FUTURES MARKETS (Sept. 2, 2013).

⁴⁸ Liam Vaughan, *et al.*, *London Gold Fix Calls Draw Scrutiny Amid Heavy Trading*, BLOOMBERG, Nov. 26, 2013, available at <http://www.bloomberg.com/news/2013-11-26/gold-fix-drawing-scrutiny-amid-knowledge-tied-to-eruption.html>.

⁴⁹ Liam Vaughan, *Gold Fix Study Shows Signs of Decade of Bank Manipulation*, BLOOMBERG, Feb 28, 2014, available at <http://www.bloomberg.com/news/print/2014-02-28/gold-fix-study-shows-signs-of-decade-of-bank-manipulation.html>.

“likely that co-operation between participants may be occurring.”⁵⁰ The study found that the afternoon gold fix has exhibited statistically significant of unusually large spikes in spot gold prices not observed prior to 2004. It identifies a “puzzling number of large downward price movements in the run-up to the afternoon ‘fix,’” in the form of “spikes ‘too frequent and too large’ to be mere chance.”⁵¹ “The anomalous spikes were not noticeable in the period 2001-03, . . . but became apparent only after 2004, when the gold-derivatives market expanded sharply.”⁵²

87. Also in February 2014, THE FINANCIAL TIMES reported on a second forthcoming study by other researchers suggestive of collusion.⁵³ “Global gold prices may have been manipulated on 50 per cent of occasions between January 2010 and December 2013, according to analysis by Fideres, a consultancy,” THE FINANCIAL TIMES reported.⁵⁴ “Fideres’ research found the gold price frequently climbs (or falls) once a twice-daily conference call between the five banks begins, peaks (or troughs) almost exactly as the call ends and then experiences a sharp reversal, a pattern it alleged may be evidence of ‘collusive behavior.’”⁵⁵

⁵⁰ *Id.*

⁵¹ *In a Fix, Mr. Bond: New concerns surround the way the world gold price is set*, THE ECONOMIST, Mar. 8, 2014, available at <http://www.economist.com/news/finance-and-economics/21598676-new-concerns-surround-way-world-gold-price-set-fix-mr-bond>.

⁵² *Id.*

⁵³ *Gold price rigging fears put investors on alert*, THE FINANCIAL TIMES, February 23, 2013, available at <http://www.zerohedge.com/news/2014-02-25/here-fts-gold-price-manipulation-article-was-removed>.

⁵⁴ *Id.*

⁵⁵ *Id.*

IX. DEFENDANTS CAUSED SUBSTANTIAL ANTICOMPETITIVE EFFECTS AND OBTAINED ILL-GOTTEN GAINS DURING THE CLASS PERIOD AND CONTINUE TO DO SO

88. On information and belief, by their conspiracy and overt acts in furtherance thereof, Defendants did in fact fix and manipulate the price of physical gold and financial instruments directly linked to the price of gold during the Class Period.

89. Plaintiff and members of the Class did in fact transact in physical gold and financial instruments directly linked to the price of gold, which materially and proximately caused Plaintiff and members of the Class injury to their business and property, within the meaning of Section 4 of the Clayton Antitrust Act and analogous state law.

90. Plaintiff and members of the Class are threatened with impending future harm, within the meaning of Section 16 of the Clayton Act and analogous state law, if Defendants' continuing combination and conspiracy is allowed to continue unabated.

91. Defendants have collected ill-gotten gains as a direct and proximate result of the conduct alleged herein and will continue to be so unjustly enriched at the expense of Plaintiff and the members of the Class, absent Court intervention.

X. DEFENDANTS ACTIVELY AND FRAUDULENTLY CONCEALED THEIR UNLAWFUL COMBINATION AND CONSPIRACY, THE ANTICOMPETITIVE EFFECTS THEREOF, AND THEIR ILL-GOTTEN GAINS OBTAINED

92. Plaintiff disclaims any burden to plead facts regarding the statute of limitations.

93. By its very nature, as alleged herein, the unlawful activity that Defendants engaged in was self-concealing. By Defendants' affirmative acts, misrepresentations, and nondisclosures, any applicable statute of limitations on claims asserted by Plaintiff and members of the Class have been and are tolled.

94. Plaintiff and members of the Class had no knowledge of the unlawful conduct alleged in this Complaint, or of any facts that could or would have led to the discovery thereof, until

at least 2014. In the exercise of reasonable diligence, Plaintiff could not have discovered Defendants violations of law such that suit could be brought.

95. Moreover, Defendants actively concealed their conspiracy by placing a barrier for the public to access much of the information on its website, www.goldfixing.com. Upon visiting its website, the public is greeted ominously. Visitors are allowed to see nothing without entering into “Terms and Conditions,” which require visitors to enter into an ostensibly onerous “contract” with Gold Price Fixing Limited. Any person or entity wishing to learn about the Fix directly from Gold Price Fixing Limited itself is thus faced with a substantial deterrent to investigation.

XI. CAUSES OF ACTION

COUNT I: Section 1 of the Sherman Antitrust Act

96. Plaintiff repeats and reasserts each of the preceding allegations as if fully set forth herein.

97. The combination and conspiracy alleged herein is a *per se* violation of Section 1 of the Sherman Antitrust Act.

98. Alternatively, the combination and conspiracy alleged herein is a rule of reason violation of Section 1 of the Sherman Antitrust Act.

99. Defendants intended to and actually did restrain trade. They shared a conscious commitment to a common scheme designed to achieve the unlawful objective of artificially fixing, depressing, raising, pegging, maintaining, stabilizing, and otherwise manipulating the price of physical gold and financial instruments directly linked to the price of gold held and traded in the United States.

100. The conspiracy unreasonably restrained trade. There is no legitimate business justification for, or procompetitive benefits caused by, Defendants’ unreasonable restraint of trade.

Any ostensible procompetitive benefit was pretextual or could have been achieved by less restrictive means.

101. Plaintiff and members of the Class have been injured in their business and property by reason of Defendants' violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, within the meaning of Section 4 of the Clayton Antitrust Act, 15 U.S.C. § 15.

102. Plaintiff and members of the Class are threatened with impending future injury to their business and property by reason of Defendants' continuing violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, within the meaning of Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.

**COUNT II:
State Antitrust and Consumer Protection Statutes**

103. Plaintiff repeats and reasserts each of the preceding allegations as if fully set forth herein.

104. By reason of the foregoing, Defendants have violated, and Plaintiff and members of the class are entitled to relief under:

- a. Arizona Revised Statutes § 44-1401, *et seq.*
- b. California Cartwright Act, California Business and Professions Code § 16700, *et seq.*
- c. California Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*
- d. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110, *et seq.*
- e. District of Columbia Code § 28-4501, *et seq.*
- f. Florida Deceptive and Unfair Trade Practices Act, Florida Statutes § 501.201, *et seq.*

- g. Hawaii Revised Statutes § 480-1, *et seq.*
- h. Illinois Antitrust Act, Illinois Comp. Statutes § 740, Ill. Comp. Stat. 1011
et seq.
- i. Iowa Competition Law, Iowa Code § 553.1, *et seq.*
- j. Kansas Statutes Annotated § 50-101, *et seq.*
- k. Maine Revised Statutes, tit. 10, § 1101, *et seq.*
- l. Michigan Antitrust Reform Act, Michigan Compiled Laws § 445.771, *et
seq.*
- m. Minnesota Antitrust Law of 1971, Minnesota Statutes § 325D.49, *et seq.*
- n. Mississippi Code Annotated § 75-21-1, *et seq.*
- o. Nebraska Revised Statutes § 59-801, *et seq.*
- p. Nevada Unfair Trade Practices Act, Nevada Revised Statutes § 598A.010, *et
seq.*
- q. New Mexico Antitrust Act, New Mexico Statutes Annotated § 57-1-1, *et
seq.*
- r. Donnelly Act, New York General Business Law § 340, *et seq.*
- s. New York General Business Law § 349, *et seq.*
- t. North Carolina General Statutes § 75-1, *et seq.*
- u. North Dakota Uniform State Antitrust Act, North Dakota Century Code §
51-08.1-01, *et seq.*
- v. Oregon Revised Statutes § 646.705, *et seq.*
- w. South Dakota Codified Laws § 37-1-3.1, *et seq.*
- x. Tennessee Code Annotated § 47-25-101, *et seq.*
- y. Vermont Statutes Annotated, tit. 9, § 2451, *et seq.*

z. West Virginia Antitrust Act, West Virginia Code § 47-18-1, *et seq.*

aa. Wisconsin Statutes § 133.01, *et seq.*

**COUNT III:
Unjust Enrichment Under Laws of All U.S. States and Territories**

105. Plaintiff repeats and reasserts each of the preceding allegations as if fully set forth herein.

106. By means of their unlawful conduct set forth herein, Defendants knowingly acted in an unfair, unconscionable, oppressive, and otherwise inequitable manner.

107. As a result, Defendants have realized substantial ill-gotten gains. Defendants have unlawfully manipulated the price of physical gold and financial instruments directly linked to the price of gold at the expense of, and to the detriment of, Plaintiff and members of the Class, and to Defendants' benefit and enrichment.

108. The loss of Plaintiff and members of the Class and the gains of Defendants are directly traceable to, and resulted directly and proximately from, the conduct challenged in this Complaint.

109. It is inequitable to permit Defendants to retain the benefits they have received, which rightfully belong to Plaintiff and members of the Class.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the Class, respectfully prays the Court for a judgment, as follows:

A. Judgment of Violation of Section 1 of the Sherman Antitrust Act

110. Plaintiff prays that the Court adjudge and decree that Defendants violated Section 1 of the Sherman Antitrust Act of 1890 (as amended), 15 U.S.C. § 1, and enter joint and several judgments against Defendants in favor of Plaintiff and members of the Class.

B. Judgment of Antitrust Injury and Standing Under Sections 4 and 16 of the Clayton Antitrust Act

111. Plaintiff prays that the Court adjudge and decree that Plaintiff has suffered antitrust injury and has antitrust standing to sue Defendants for their violations of law.

C. Judgment of Violation of the Laws of the Several States

1. State Antitrust and Unfair Competition Laws

112. Plaintiff prays that the Court adjudge and decree that Defendants violated: Arizona Revised Statutes § 44-1401, *et seq.*; California Cartwright Act, California Business and Professions Code § 16700, *et seq.*; California Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*; Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110, *et seq.*; District of Columbia Code § 28-4501, *et seq.*; Florida Deceptive and Unfair Trade Practices Act, Florida Statutes § 501.201, *et seq.*; Hawaii Revised Statutes § 480-1, *et seq.*; Illinois Antitrust Act, Illinois Compiled Statutes § 740, Ill. Comp. Stat. 1011 *et seq.*; Iowa Competition Law, Iowa Code § 553.1, *et seq.*; Kansas Statutes Annotated § 50-101, *et seq.*; Maine Revised Statutes, tit. 10, § 1101, *et seq.*; Michigan Antitrust Reform Act, Michigan Compiled Laws § 445.771, *et seq.*; Minnesota Antitrust Law of 1971, Minnesota Statutes § 325D.49, *et seq.*; Mississippi Code Annotated § 75-21-1, *et seq.*; Nebraska Revised Statutes § 59-801, *et seq.*; Nevada Unfair Trade Practices Act, Nevada Revised Statutes § 598A.010, *et seq.*; New Mexico Antitrust Act, New Mexico Statutes Annotated § 57-1-1, *et seq.*; Donnelly Act, New York General Business Law § 340, *et seq.*; New York General Business Law § 349, *et seq.*; North Carolina General Statutes § 75-1, *et seq.*; North Dakota Uniform State Antitrust Act, North Dakota Century Code § 51-08.1-01, *et seq.*; Oregon Revised Statutes § 646.705, *et seq.*; South Dakota Codified Laws § 37-1-3.1, *et seq.*; Tennessee Code Annotated § 47-25-101, *et seq.*; Vermont Statutes Annotated, tit. 9, § 2451, *et seq.*; West Virginia Antitrust Act, West Virginia Code § 47-18-1, *et seq.*; Wisconsin Statutes §

133.01, *et seq.*

2. Unjust Enrichment

113. Plaintiff prays that the Court adjudge and decree that Defendants have been unjustly enriched under the laws of each of the fifty United States and its territories, to the extent that such states and territories recognize the common law doctrine of unjust enrichment, and award disgorgement as an equitable remedy therefor.

D. Certification of Plaintiff Class under Rules 23(a) & (b) of the Federal Rules of Civil Procedure

114. Plaintiff prays that the Court Order that this action may be maintained as a class action pursuant to Rules 23(a) & (b) of the Federal Rules of Civil Procedure, that he be named a Class Representative and that reasonable notice of this action, as provided by Fed. R. Civ. P. 23(c)(2), be given to the Class.

E. Treble Damages

115. Plaintiff prays that the Court award three times the damages suffered by reason of Defendants' violations of law.

F. Punitive Damages

116. Plaintiff prays that the Court award punitive damages.

G. Full Consideration Damages

117. Plaintiff prays that the Court award full consideration damages.

H. Disgorgement

118. Plaintiff prays that Defendants be made to disgorge all ill-gotten gains.

I. Costs of Suit

119. Plaintiff prays that the Court award reasonable costs of suit.

J. Pre-and Post-Judgment Interest

120. Plaintiff prays that the Court award pre-and post-judgment interest.

K. Reasonable Attorney's Fees

121. Plaintiff prays that the Court award reasonable attorney's fees.

L. Other Just and Proper Relief

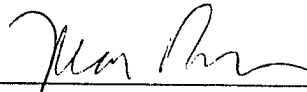
122. Plaintiff prays that the Court grants such other, further and different relief as is just and proper.

XIII. DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff, on behalf of himself and members of the proposed Class, respectfully demands a trial by jury on all issues so triable.

Dated: March 26, 2014

Respectfully submitted,



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